SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 1086

THE MOODY BIBLE INSTITUTE OF CHICAGO,
Appellant,

vs.

CITY OF CHICAGO.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

BARNET HODES,
Corporation Counsel of the City of Chicago;
JOSEPH F. GROSSMAN,
First Assistant Corporation Counsel;
J. HERZL SEGAL,
Assistant Corporation Counsel,
Counsel for Appellee.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 1086

THE PEOPLE OF THE STATE OF ILLINOIS ON RELATION OF THE MOODY BIBLE INSTITUTE OF CHICAGO, A CORPORATION NOT FOR PROFIT,

Appellant,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION, ET AL.,

Appellees.

APPEAL FROM THE SUPREME COURT OF ILLINOIS, No. 26665.

STATEMENT BY APPELLEES OF MATTERS AND GROUNDS MAKING AGAINST THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

MAY IT PLEASE THE COURT:

The appellees, City of Chicago, a municipal corporation, et al. respectfully present to the court the following matters and grounds making against the jurisdiction of the

Supreme Court of the United States as asserted by the appellant herein in its statement of jurisdictional facts filed herein on the 6th day of April, 1943, and served upon the appellees on the 10th day of April, 1943, as required by Rule 12 of this honorable court:

Statement of the Case.

The statement of jurisdictional facts refers only to the opinion of the Supreme Court of the State of Illinois filed in this case on the 17th day of November, 1942, which opinion is appended to the statement of jurisdictional facts. As will appear from this opinion (which is officially reported under the title *The People ex rel. The Moody Bible Institute of Chicago, plaintiff in error* v. *The City of Chicago, et al., defendants in error,* in 382 Ill. 70) the Supreme Court of Illinois did not decide the case upon the merits. That court dismissed a writ of error sued out to the Appellate Court of Illinois, First District, on the ground that no constitutional question was in the case which would support a writ of error. The highest court of review which considered this case on the merits was the Appellate Court of Illinois, First District. Its opinion in this case is officially reported under the title *People ex rel. Moody Bible Institute of Chicago* v. *City of Chicago* in 312 Ill. App. 126. The opinion of this Court contains a complete and correct discussion of the facts upon which the decision rested. The court is respectfully referred to that decision for a full understanding of the facts and issues involved in the State courts. For the convenience of the court a copy of the opinion is appended hereto.

Stated in concise form the facts in the instant case are these: Pursuant to an ordinance of the City of Chicago passed December 23, 1924, proceedings were instituted in the County Court of Cook County under the Local Im-

provement Act of the State of Illinois for the purpose of widening North La Salle Street. The Moody Bible Institute owned three parcels of land on that street. It filed legal objections to the special assessments and the amounts of the proposed condemnation awards. The County Court overruled such objections, the Institute waived further controversy (which was tantamount to a demurrer) and judgment was rendered confirming the assessments against its property and the awards in its favor. The awards for compensation aggregated $519,727.00.

The Institute appealed to the Supreme Court of Illinois which affirmed the judgment. Thereupon proceedings were filed in this Court in an attempt to obtain a review of the judgment of the Supreme Court of Illinois. During the pendency of the proceedings in this Court the parties effected a compromise and entered into a written stipulation whereby the proceedings in this Court were dismissed. The award in favor of the Institute was increased by $350,000.00 and the special assessment against the property of the Institute was reduced by half. Thereafter, pursuant to the stipulation a trial was had in the County Court without a jury and a judgment awarding compensation to the Institute in the aggregate sum of $869,727.00 was entered. Shortly thereafter the city paid to the Institute the amount of the original awards, but refused to pay the increase in the awards until such time as the Institute should remove the portion of the buildings standing upon the strip of land condemned for street widening purposes. This position of the city was based upon the provisions of the written stipulation wherein the Institute agreed to effect such removal.

The present action was filed to compel the payment of that portion of the award remaining unpaid representing the stipulated increase over the sum originally awarded.

The trial court gave full effect to the written stipulation and held that the city was not required to pay the balance until after the Institute had removed its property from the condemned strip of land. The Appellate Court of Illinois affirmed this action of the trial court. The Supreme Court of Illinois denied a petition for leave to appeal thereby affirming the decision of the Appellate Court. Following the denial of the petition for leave to appeal the Institute sued out a writ of error on the theory that an appeal to the Illinois Supreme Court lay as a matter of right because alleged constitutional issues were in the case. The Supreme Court dismissed this writ of error and refused to consider the case on the merits holding that no constitutional questions were involved. It is this last mentioned decision which the Institute seeks to review.

The property of the Institute has not yet been removed from the strip of land condemned by the city.

I.

There has been no denial of due process because the laws of the State of Illinois provide and the appellant has availed itself of a fair and adequate hearing in court for the adjudication of its rights.

The statement of jurisdictional facts filed by appellant devotes considerable space to demonstrating that it has preserved at all stages of the proceedings its assertion that its rights under the Federal Constitution are affected by this proceeding and that the failure of the City of Chicago to pay the balance of the condemnation award deprives appellant of its just compensation. Appellant could more profitably have devoted itself to the task of attempting to demonstrate just how its rights have been infringed. We concede that from the very outset the appellant has as-

serted a Federal question. We contend, however, that the case presents no impairment of any rights of the appellant guaranteed by the due process clause of the Federal Constitution.

We are at a loss to understand the precise theory upon which appellant asserts that it has been deprived of its property without due process of law. Appellant bases its right to appeal to this Court upon the provisions of Section 237 of the Judicial Code of the United States (28 U. S. C. A., Section 344) which so far as is material to this case provides:

> "(a) A final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had, * * * where is drawn, in question the validity of a statute of any state, on the ground of its being repugnant to the constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

In an effort to bring itself within the scope of this provision of the Judicial Code, appellant asserts that the Local Improvement Act of the State of Illinois as construed by the Supreme Court of the State violates petitioner's rights under Section 1 of the Fourteenth Amendment to the United States Constitution. Appellant refers to the entire Local Improvement Act (1941 Ill. Rev. Stats., chap. 24, sec. 81-1 to 84-99) in subdivision B of its jurisdictional statement. No further reference to the statute is made anywhere in the jurisdictional statement and it is not pointed out precisely which of the 99 sections of the Local Improvement Act results in an infringement of appellant's rights under the Federal Constitution. The obvious explanation is that the statute is free from any constitutional objection. The Local Improvement Act of the State of Illinois prescribes the well established and orthodox procedure for

condemning property for local improvements with adequate provision for hearings in court to determine the amount of compensation and the amount of the assessment against property benefited. In the case at bar proper proceedings were had, the appellant was duly represented in court by competent counsel and the award ultimately given it and the assessment levied against it were agreed upon between the appellant and the condemnor. There is accordingly not present in this case the question of compensation or assessment contrary to the volition of the property owner. The appellant is completely satisfied with the compensation awarded it and makes no complaint on that account. It received over a half million dollars on account, still has possession of the property, and is seeking payment of the balance of the award. It sole complaint is that failure on the part of the city to pay the balance and the decision of the court in upholding the city's refusal to pay the balance deprives appellant of property without due process of law. The unsoundness of that contention appears evident.

The Local Improvement Act is not and cannot be involved in this case. The proceedings thereunder have fully terminated and in a manner which is entirely satisfactory to appellant. The present suit forms no part of the proceedings under the Local Improvement Act. The Supreme Court of Illinois in its opinion in this case squarely so holds (382 Ill. 70, 76). The Supreme Court of Illinois considers this mandadmus action to collect the award an original suit and not a continuation of the proceeding under the Local Improvement Act. This holding is manifestly a sound holding, but even if it were not, that holding relates to a matter of procedure, is a local question and is accordingly not subject to review by this court. In any event no deprivation of property without due process results because it is im-

material whether the proceeding be regarded as a continuation of the proceeding under the Local Improvement Act or an original suit so long as an adequate remedy is afforded for the collection of the award. The only section of the Local Improvement Act which can possibly be considered pertinent to the issues in this case is section 84-32 (Ill. Rev Stats. 1941, chap. 24, par. 84-32) which in substance provides that if the condemnor does not elect within 90 days after final judgment to dismiss the proceeding and elects to enter judgment on the verdict it becomes bound thereby to pay the amount thereof whether the assessment is collected or not and the judgment of condemnation shall not be conditional. This section of the Local Improvement Act has been uniformly held by the Supreme Court of Illinois to result in a *quod recuperet* judgment payable at all events by the condemnor. (*Turk v. City of Chicago*, 352 Ill. 171; *Feldman* v. *City of Chicago*, 363 Ill. 247.) The Supreme Court of Illinois has further held that this judgment is payable even though physical possession of the property is not surrendered to the condemnor (*People ex rel. Wieboldt Stores, Inc.* v. *City of Chicago*, 368 Ill. 421) and in the opinion in the instant case the Supreme Court of Illinois held (382 Ill. 70, 74-75):

> "It is conceded that if no stipulation had been entered into, the taking of property without paying the full amount of the condemnation judgment would have been a violation of the constitutional rights of the plaintiff in error (Constitution of 1870, Section 13, Article II; *People ex rel. Farwell Company* v. *Kelly*, 361 Ill. 54; *Eldred Drainage and Levy District* v. *Wilcoxon*, 365 id. 249). These authorities all support the well known constitutional provision that 'private property shall not be taken or damaged for public use without just compensation,' and that the constitutional guaranty is not satisfied by the judgment alone, but only by the payment of it."

It appears therefore that so far as the constitution of the State of Illinois and the statutes of the state relating to the condemnation of property are concerned as construed by the Supreme Court of Illinois, the rights of the property owner are protected in the broadest possible manner. Private property cannot be taken for a public use except after due process, the determination of just compensation, and the actual and prompt payment thereof.

These conditions satisfy the requirements of the Federal constitution in cases of this nature. As was said by this court in *Appleby* v. *Buffalo*, 221 U. S. 524 (one of the cases cited by appellant in its jurisdictional statement) at page 532:

> "The only assignment of error which is here open to review does not show that the court below, by any ruling of law, deprived the owner of the right of compensation for his property. The alleged denial of Federal right rests upon the assertion that the damages were nominal, while the property taken was of greater value. But, as this court has heretofore held, if the state has provided adequate machinery for the ascertainment of compensation, upon notice and hearing, and the record discloses no ruling of law which prevented compensation to the owner for the property taken, there is no lack of due process."

Under these circumstances the complaint of the appellant in this case must necessarily resolve itself into the charge that the decision of the court is erroneous.

This does not constitute a deprivation of due process. The Fourteenth Amendment to the constitution of the United States does not guarantee correct decisions by the state courts. All that the constitution guarantees is a fair and adequate hearing. The fundamental principles in this respect are well defined in *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112. At page 157 this court said;

"It was never intended that this court should, as the effect of the amendment, be transformed into a court of appeal, where all decisions of state courts involving merely questions of general justice and equitable considerations in the taking of property should be submitted to this court for its determination. The final jurisdiction of the courts of the states would thereby be enormously reduced and a corresponding increase in the jurisdiction of this court would result, and it would be enormously reduced and a corresponding increase in

The following decisions of this court similarly declare that where the parties have been fully heard in the regular course of judicial proceeding, an erroneous decision of the state court does not deprive the unsuccessful party of his property without due process of law within the Fourteenth Amendment of the Constitution of the United States:

Central Land Company v. *Laidley*, 159 U. S. 103, 112;
Arrowsmith v. *Harmoning*, 118 U. S. 194, 196;
Patterson v. *Colorado*, 205 U. S. 454;
In re Converse, 137 U. S. 624, 631.

The soundness of our analysis of appellant's position is disclosed by the following excerpts from appellant's jurisdictional statement:

"Appellant's further contention is that the rulings of law by the courts below upon the evidence herein, prevented it from obtaining just compensation for its property, and constituted a violation of its rights to an equal protection of the laws as well as of the right to due process of law under the Fourteenth Amendment. * * *

"As hereinabove already pointed out, a further violation of appellant's constittuional rights under the Fourteenth Amendment arose out of the rulings of law upon the evidence herein. Appellant's first contention is that the stipulation upon which appellee relies cannot be used as a bar to defeat the claim for full payment of the compensation as adjudicated by the

> County Court. It next contends that even if such a stipulation could lawfully be given effect in a proper case, the evidence herein, introduced by appellee itself, showed that all of the requirements of the stipulation were complied with by appellant and that it was therefore entitled to full payment of its judgment. There is no evidence in the record to support the ruling of the lower courts to the effect that the stipulation barred appellant's right to collect its judgment in full."

It is abundantly clear from the foregoing that the essence of appellant's complaint is that the court reached an erroneous conclusion upon the admitted facts. In view of the decisions of this court above cited, this provides no basis for a review of the decision by this court.

Our reliance upon those authorities does not mean that we concede for one moment that the trial court or the courts of review were not completely justified in their decisions. Any other result would have been a clear miscarriage of justice. The constitutions of the state and Federal government are intended to act as a shield for the protection of the property rights against seizure by sovereign authority. They are not intended to operate as an instrument to permit the breach of solemn agreements voluntarily entered into between the property owner and the condemnor. In the present case the upholding of the agreement by the courts operates to do justice between the parties. The effect of the agreement is accurately characterized by the Appellate Court of Illinois after a painstaking consideration of the case upon the merits as follows (312 Ill. App. 126, 147):

> "The admission in evidence of the stipulation of October 6, 1930 did not constitute a collateral attack on the condemnation judgment, and to hold the Institute to the performance of its undertaking to remove the obstructions does not in any manner modify or contradict the condemnation judgment either as to its amount or its finality. It merely postpones plaintiff's

> right to demand the payment of the balance of its condemnation judgment until it performs its obligation to remove its buildings from the condemned portions of its property."

The Supreme Court of Illinois was satisfied with the decision of the Appellate Court and in its opinion fully recognized that under ordinary circumstances the condemnor is required to pay the judgment in order to fully satisfy the constitutional guaranty. We have above quoted the pertinent portion of its opinion. Notwithstanding the general rule, the Supreme Court properly considered the circumstances in this case as presenting an exception to the general rule (382 Ill. 70, 75):

> "But the City of Chicago and the plaintiff in error saw fit to enter into a written contract or stipulation wherein and whereby very substantial questions and differences of opinion were compromised, settled and agreed upon, which creates an entirely different situation from the facts set forth in the above mentioned cases."

The city has paid more than a half million dollars to the Institute for a 14 foot strip of land which it condemned, which even today still remains physically in the possession of the appellant, and upon which stands a portion of a very substantial building. It is this building which the appellant by solemn contract has agreed to remove before requiring payment of the award. Not satisfied with having received payment of over a half million dollars prematurely, the Institute in flagrant violation of its agreement, in the opinion of the state trial court and courts of review, stubbornly refuses to remove the buildings but insists upon payment of the balance of the award. Under these circumstances, it is utterly groundless to argue that the plaintiff has suffered infringement of its constitutional rights. More than that, it is downright legal hypocrisy.

It is respectfully submitted that the questions raised by the appellant on which the decision of the cause depends are so unsubstantial as not to need further argument. A motion to dismiss or affirm is therefore presented herewith.

Respectfully submitted,

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